

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND DEVELOPMENT
TRUST,

Plaintiff,

v.

AMPRO TOOLS CORPORATION,

Defendant.

No. 08-00096 CW

ORDER GRANTING MOTION
TO SET ASIDE DEFAULT

On October 28, 2008, Defendant AmPro Tools Corporation (AmPro) filed a motion for leave to file responsive pleadings under Civil Local Rule 6-3.¹ Plaintiff Jens Erik Sorensen (Sorensen) opposes the motion and moves to strike AmPro's reply to Sorensen's opposition. The Court has taken the matter under submission. Having considered the papers submitted and the applicable law, the Court grants AmPro's motion to set aside the default and denies Sorensen's motion to strike.

BACKGROUND

On January 7, 2008, Sorensen, acting as trustee for the Sorensen Research and Development Trust (the Trust), filed a complaint for patent infringement against AmPro. In the complaint,

¹ Civil Local Rule 6-3 provides requirements for filing motions to change time. See Civ. L. R. 6-3. AmPro may not file a motion to change time because the court clerk entered default against AmPro on March 26, 2008. Because AmPro ultimately seeks relief from default, however, the Court will treat AmPro's motion as a motion to set aside the default. See Fed. R. Civ. P. 55(c).

1 Sorensen alleges that AmPro infringed U.S. Patent No. 4,935,184
2 ('184 patent), and that the Trust suffered damages as a result.

3 AmPro failed timely to respond to the complaint. On March
4 26, 2008, at Sorensen's request, the clerk entered default against
5 AmPro. On April 7, 2008, the case was referred to the Honorable
6 Wayne D. Brazil for a report and recommendation regarding default
7 judgment.
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9 On October 28, 2008, AmPro filed the instant motion seeking
10 leave to file responsive pleadings. As noted, the Court construes
11 this motion as a motion to set aside the default under Federal Rule
12 of Civil Procedure 55(c). On November 3, 2008, Judge Brazil issued
13 an order deferring his report and recommendation pending the
14 resolution of this motion. On January 5, 2009, Sorensen filed a
15 motion to strike AmPro's reply to Sorensen's opposition.
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17 LEGAL STANDARD

18 Federal Rule of Civil Procedure 55(c) provides that a court
19 "may set aside an entry of default for good cause." The district
20 court has discretion to determine whether a party demonstrates
21 "good cause." Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969). The
22 court's discretion is particularly broad where a party seeks to set
23 aside an entry of default rather than a default judgment. Mendoza
24 v. Wight Vineyard Mgmt., 783 F.2d 941, 945 (9th Cir. 1985).
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26 In evaluating whether a party has demonstrated good cause, a
27 district court may consider the following factors: (1) the
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1 possibility of prejudice to the plaintiff, (2) the merits of the
2 plaintiff's substantive claim, (3) the sufficiency of the
3 complaint, (4) the sum of money at stake in the action, (5) the
4 possibility of a dispute concerning material facts, (6) whether the
5 default was due to excusable neglect, and (7) the strong policy
6 underlying the Federal Rules of Civil Procedure favoring decisions
7 on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.
8 1986). Default judgments are "ordinarily disfavored" because
9 "[c]ases should be decided upon their merits whenever reasonably
10 possible." Id. at 1472. Thus, whenever "timely relief is sought
11 . . . and the movant has a meritorious defense," a court must
12 resolve any doubt in favor of setting aside the default. Mendoza,
13 783 F.2d at 945-46.

16 DISCUSSION

17 A. Motion to Set Aside the Default

18 In the present case, two of the Eitel factors weigh in
19 Sorensen's favor. First, AmPro has made no showing of excusable
20 neglect. AmPro concedes that it failed timely to respond to the
21 complaint, but it offers no explanation for this failure. Sorensen
22 contends that AmPro's failure to respond amounts to bad faith
23 misconduct which, in and of itself, warrants the entry of default
24 judgment. The Court finds little support in the record for this
25 argument. Nevertheless, it is clear that AmPro has not
26 demonstrated excusable neglect.
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1 Second, the amount in controversy is \$32,000. See Docket No.
2 25 at 9-10. This relatively small figure is an amount which, under
3 certain circumstances, could be appropriate for disposition through
4 default judgment. See, e.g., Eitel, 782 F.2d at 1472 (holding that
5 district court did not abuse its discretion in setting aside
6 default where plaintiff sought \$3,000,000 in damages).

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8 The remainder of the Eitel factors, however, weigh in favor
9 of setting aside the default. For one, Sorensen will suffer no
10 prejudice from litigating this case. Sorensen has made no showing,
11 for example, that moving forward with the lawsuit would result in
12 undue expense, or that his ability to litigate the case has been
13 hindered by the passage of time.

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15 Second, AmPro has identified at least one dispute of material
16 fact. In its reply, AmPro contends that Sorensen misrepresented
17 certain facts underlying Sorensen's calculation of damages. To the
18 extent AmPro calls into question the factual basis underlying
19 Sorensen's theory of damages, these disputed facts are critical to
20 the resolution of the case and are therefore material.

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22 Third, AmPro has raised questions regarding the merits of
23 Sorensen's case. AmPro makes the following arguments: that (1) the
24 U.S. Patent and Trademark Office has found certain claims of the
25 '184 patent to be invalid; (2) Sorensen cannot prove his theory of
26 damages; (3) AmPro is an improper defendant; and (4) Sorensen's
27 "presumption of infringement" theory of liability lacks merit. The
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1 Court passes no judgment on the merits of these arguments, other
2 than to note that AmPro appears to possess colorable defenses.

3 In sum, the Court finds that default judgment is not
4 appropriate in this case. Although AmPro waited several months
5 after the entry of default to seek relief, it filed the instant
6 motion prior to the entry of default judgment, and was therefore
7 "timely" under the liberal standard for granting relief from
8 default. See Mendoza, 783 F.2d at 945-46. Moreover, as noted,
9 AmPro has set forth several colorable defenses. Accordingly, in
10 light of the strong policy against default judgments, and resolving
11 all doubt in AmPro's favor, see id., the Court concludes that AmPro
12 should be permitted to respond to the complaint.
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15 B. Motion to Strike

16 Sorensen moves to strike AmPro's reply on the grounds that:
17 (1) the reply exceeds the scope of AmPro's opening brief; (2) the
18 reply fails to respond to Sorensen's opposition; and (3) the reply
19 contains irrelevant facts and arguments.

20 The Court does not agree. As illustrated by the preceding
21 discussion, the facts and arguments contained in AmPro's reply bear
22 directly on Sorensen's Rule 55(c) arguments. The reply is
23 therefore responsive and relevant. In addition, the reply does not
24 improperly exceed the scope of the opening brief. Although the
25 reply brief contains a larger number of pages than the original
26 motion, as noted, the material in the reply brief was a reasonable
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1 response to the points made in Sorensen's opposition. See Am.
2 Civil Liberties Union of Nev. v. City of Las Vegas, 333 F.3d 1092,
3 1106 n.14 (9th Cir. 2003). Accordingly, the Court will not strike
4 AmPro's reply.

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6 CONCLUSION

7 For the foregoing reasons, the Court hereby GRANTS AmPro's
8 motion to set aside the default (Docket No. 33) and DENIES
9 Sorensen's motion to strike (Docket No. 48). The reference to
10 Judge Brazil of the motion for default judgment is withdrawn.
11 Sorensen indicates that he wishes to file an amended complaint.
12 Because AmPro has not yet responded to the complaint, Sorensen may
13 file an amended complaint as of right. If he wishes to file an
14 amended complaint, he shall do so on or before January 9, 2009, and
15 serve it as soon as possible on any new defendants. AmPro shall
16 file its responsive pleading on January 15, 2009. If AmPro files a
17 motion to dismiss, it shall be noticed to be heard on February 19,
18 2009 at 2 p.m. along with the Case Management Conference.
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22 IT IS SO ORDERED.

23 1/6/09

24 Dated: _____



25 CLAUDIA WILKEN
26 United States District Judge
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